

REMARKS

Summary of Changes Made

The application was filed with nine (9) claims, and claims numbering as high as 22 were later added. Claims 20-22 were withdrawn as directed to non-elected inventions. Presently new claim 23 is added. Claim 23 is a combination of the limitations of all of claims 10-14. Accordingly, claims 10-19, and 23 (10 claims) remain pending in the application. No new matter is added hereby.

Claim Rejections- 35 U.S.C. 103(a) – (Brieva/Knipper/Picard)

Claims 10-14 are rejected under 35 U.S.C. 103(a) as being anticipated by Brieva, U.S. 5,066,485, (“Brieva”), in view of Knipper, U.S. 5,514,792, (“Knipper”), and Picard, U.S. 5,510,100, (“Picard”).

The Examiner’s contentions regarding Brieva are the same as in the previous Office Action. The Examiner admits that Brieva fails to explicitly teach succinoglycan or the amount of glycerol. Knipper is therefore cited for a teaching of a succinoglycan useful as a thickener or stabilizer in a cosmetic. The Examiner contends that Knipper teaches that succinoglycans exhibit rheological properties similar to those of xanthan gum.

Further, The Examiner contends that Picard teaches oil-in-water emulsions including 0.2% xanthan gum and 3% of humectants.

The Examiner concludes that the use of Knipper’s succinoglycan in an oil-in-water emulsion would have been obvious.

Contrary to the Examiner’s assertion, there is no teaching of combining the references as the Examiner has done. Indeed, when taken together as a whole, the skilled artisan gets the distinct feeling that there is a teaching against combining the references

As noted in Applicants’ Amendment C filed 31 March 2010, Applicants stated that a sufficient amount of thickener cannot be incorporated into the composition taught by Brieva because Brieva’s composition desirably does not settle. Thus, although Brieva suggests that it is possible for the composition to incorporate humectants (e.g. glycerol) and/or thickeners (e.g. xanthane gum) as optional ingredients, the reference fails to suggest any amounts. The skilled artisan reading Brieva would thus have to experiment across the entire range of possibilities (0 to 100%) of humectants and/or thickeners.

Knipper teaches that succinoglycan may be used as a thickener in cosmetics. Brieva discloses the composition comprising 0.5% of xanthan gum as Example 4. Therefore, the examiner says that person skilled in the art would expect to use 0.5% of succinoglycan in place of xanthan gum as in Example 4.

Applicants point out that succinoglycan cannot be incorporated into the composition in an amount of 0.5% in case of Brieva's composition. The inventor herein asserts that the thickening behavior of xanthan gum and succinoglycan are quite different. Indeed, succinoglycan has a greater thickening effect than xanthan gum, while it easily undergoes "settling." According to the Inventor herein, 0.5% of xanthan gum is equivalent to 0.01% of succinoglycan in terms of levels of "settling." Therefore, behaviors of two thickeners depending on the amount are as in the following table. Each property of components (2) to (4) is clear from Table 7 of the specification.

Component	Settling or not	Thickening Property
(1) 0.5 % xanthan gum	Not settling	
(2) 0.01 % succinoglycan	Not settling	Insufficient
(3) 0.05 % succinoglycan	Settling	Sufficient
(4) 0.5 % succinoglycan	Settling	Sufficient

Since Brieva intends to provide a composition without settling, only component (1) or (2) can be incorporated into the composition. As mentioned previously, 0.5% of xanthan gum (component 1)) is equivalent to 0.01% of succinoglycan (compnent 2)) so it is clear that Brieva uses thickener only in an amount that does not cause settling. Importantly, an amount of thickener that does not cause settling also does not exhibit sufficient thickening property. Therefore, the composition by Brieva may comprise thickeners at the amount with insufficient thickening property, and the said amount is less than 0.05% when thickener is succinoglycan.

Thus, the examiner's argument, which 0.5% succinoglycan would be apply to the Brieva's composition in place of 0.5% xanthan gum, is not reasonable.

Both Brieva and Knipper never suggest that it is possible to solve the problem of "settling" by incorporating at least one plasticizer selected from the group consisting of glycerin (glycerol), polyxyethylene methyl glucoside and polyethylene glycol 20000. Thus, even if Brieva suggests the use of "glycerol" into the composition as thickener, it would not

be possible to increase the amount of succinoglycan on this basis. So, the obtained composition from the combination of the references would not meet the amount of succinoglycan specified in the present invention.

Therefore, the skilled artisan does not obtain the presently claimed invention by combining the references, as there is no way to ensure sufficient thickening property while avoiding settling.

It is believed that the above arguments serve to overcome the obviousness rejection over Brieva, Knipper and Picard.

With respect to new claim 23, which includes all limitations of claims 10-14, it is believed that the above arguments show the undesirability of combining the references. Claim 23 is believed to be patentable over all cited references.

Claim Rejections- 35 U.S.C. 103(a) – (Brieva/Knipper/Picard/Muller/Magauran)

Claims 15-19 are rejected under 35 U.S.C. 103(a) as being anticipated by Brieva, in view of Knipper, Picard, Muller, U.S. 6,511,566 (“Muller”), and Magauran, U.S. 5,340,390, (“Magauran”).

The Examiner admits that Brieva fails to disclose 12-hydroxystearic acid added polyglycerol. The Examiner contends that Muller provides this teaching. Magauran teaches that the solid particles have improved dispersibility as a result of the thickener taught by Muller.

For the same reasoning as set forth above, it is believed that claims 15-19 are patentable over the combination of five references.

Comment – Priority Documents

The Examiner will note that IB 304 is enclosed herewith, evidencing the certified translation of the priority documents. Applicants respectfully request the Examiner accept the IB 304 and enter it into the record to satisfy this requirement.

CONCLUSION

In light of the foregoing, it is respectfully submitted that the present application is in a condition for allowance and notice to that effect is hereby requested. If it is determined that the application is not in a condition for allowance, the Examiner is invited to initiate a telephone interview with the undersigned attorney to expedite prosecution of the present application. If there are any additional fees resulting from this communication, please charge same to our Deposit Account No. 18-0160, our Order No. IWI-16045.

Respectfully submitted,

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Date of mailing (day/month/year) 25 February 2004 (25.02.2004)	IMPORTANT NOTIFICATION
Applicant's or agent's file reference SS1828	
International application No. PCT/JP2003/016953	International filing date (day/month/year) 26 December 2003 (26.12.2003)
International publication date (day/month/year) Not yet published	Priority date (day/month/year) 26 December 2002 (26.12.2002)
Applicant SHISEIDO CO., LTD. et al	

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<u>Priority date</u>	<u>Priority application No.</u>	<u>Country or regional Office or PCT receiving Office</u>	<u>Date of receipt of priority document</u>
26 Dec 2002 (26.12.2002)	2002-376841	JP	12 Febr 2004 (12.02.2004)
27 Dec 2002 (27.12.2002)	2002-381342	JP	12 Febr 2004 (12.02.2004)